

GOVERNMENT OF ANDHRA PRADESH
A B S T R A C T

Tribal Welfare Department – Appeal petition filed by Sri K. Bikshapathi S/o late K. Yellaiah, against the Proceedings of the District Collector, Hyderabad District – under section 7(2) of the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act 1993 (AP Act No. 16/1993) – appeal allowed – Orders – Issued.

SOCIAL WELFARE (CV.2) DEPARTMENT

G.O.Ms.No. 64

Dated: 16 -11-2011
Read the following:

1. Proceedings of the District Collector, Hyderabad No.D6/6825/2006, dated 26-05-2008.
2. Appeal Petition from K. Bikshapathi S/o late K. Yellaiah, R/o Lab Quarters, Kanchanbagh, Hyderabad District filed before M (TW & RIAD), dated 16-06-2008.
3. Govt. Memo No.5261/CV2/2008, dated 04-07-2008.
4. The District Collector, Hyderabad, No. D5/6825/2006, dated 23-12-2008.
5. The District Collector, Hyderabad, No. D5/6825/2006, dated 07-01-2009.
6. Govt. letter No. 5261/CV2/2008, dated 09.06.2009.
7. Govt. letter No. 5261/CV2/2008, dated 08.03.2010.
8. Govt. Memo No. 5261/CV2/2008, dated 18.08.2011.

ORDER:

In the reference 1st read above, the District Collector, Hyderabad have issued orders canceling Scheduled Tribe certificate obtained by Sri K. Bikshapathi S/o late K. Yellaiah, R/o Lab Quarters, Kanchanbagh, Hyderabad District, from the then Tahsildar, Charminar.

2. In the reference 2nd read above, Sri K. Bikshapathi has filed appeal petition, with the following grounds against the cancellation of his Scheduled Tribe 'Yerukala' caste certificate by the District Collector, Hyderabad, vide Proceedings No.D6/6825/2006, dated 26-05-2008.

- a. The orders of the Collector, Hyderabad is arbitrary, illegal and against the principles of natural justice.
- b. The order passed by the Tribunal is against the weight of oral, documentary evidence. The Hon,ble Tribunal ought not to have rejected the claim of the appellant as belonging to ST Yerukala merely because the appellant was never brought up in the ST atmosphere. The Hon,ble Tribunal failed to consider the judgment report in AIR 1990 A.P. 271 "child- Status of determination – Non tribal child – Brought up by a tribal child does not become tribal or vice versa. This judgment was referred in written arguments, and Xerox copy of same was also filed before the Tribunal below has not been considered, totally ignored, leave alone appreciating it in its letter and spirit.

p.t.o.

- c. In response to notice of Joint Collector, Hyderabad the appellant has produced (1) Sri K. Swamy S/o Yellaiah (2) Sri K. Yellaiah S/o Veeraiah (3) K.Yellaiah S/o K. Peddaiah who have their depositions before Joint Collector.

“ Sri K. Swamy S/o Yellaiah, and deposed that he knows Sri K. Bikshapathi for the past 30 years and he is born to Smt. Yellamma with Sri Muthaiah. He also deposed that Smt. Yellamma married one Muthaiah after her divorce with her first husband Sri Yellaiah. Muthaiah hails from “Yerukala community” while Smt. Yellamma hails from “Veera Musti community”. It is also deposed that Muthaiah expired about 28 years back when Sri Bikshapathi was a small child of 2 or 3 years and after expiry of Sri Muthaiah, Smt. Yellamma remarried her husband Sri Yellaiah with local customary tradition and Sri K. Bikshapathi was brought up by them and therefore the name of Sri Yellaiah is shown and recorded as father of K. Bikshapathi, but his caste recorded as Yerukala, because his real father was ST. another witness Sri K. Swamy had also deposed Sri Muthaiah the real father of Sri K. Bikshapathi during his lifetime was earning his livelihood by weaving baskets and til now Sri K. Bikshapathi is being treated as “Yerukala”. The other witnesses also reiterated the same facts”.

- d. While referring provisions of G.O.Ms. No. 371, dated 13.04.1976, the Hon'ble High Court of AP while deliverimng judgment in Writ Appeal No. 1188/1996, decided on 06.12.1996 report in 1997 (1) Alt 789 (DB) held “that status or caste of the off spring has to be determinated upon recognition received from members of the community of either of the parensts and acceptance of caste people. In the instant case, it is the evidence of independent witnesses that Sri K. Bikshapathi is accepted and recognized as a person belonging to Yerukala community which comes under ST category. Further the appellant has referred the another judgment reported in 2001(1) ALD 385 it has been held by their lordship Hon'ble Justice Sri E. Dharma Rao, and he stated that he belongs to ST community as per Judgments.
- e. The finding of the Collector, that the parents of the appellant with a plan have made entries the school records mentioning his caste as veeramusthi ST and subsequently he claimed Yerukala ST community certificate from Tahsildar, Charminar, suppressing the above facts, is absolutely incorrect and not based on any material on record. The said finding has been aggrieved at on mere assumptions and presumptions.
- f. The appellant natural father was died when he was only 2/3 years old, his mother is an illiterate: then his foster father K. Yellaiah is also an illiterate. In the background of this whether the entries in School Admission Register can be said that the contents therein are conclusive proof remains to be seen. It has been held in a judgment report in AIR 2004 Orissa 14: (D) Ss,4 and 35- conclusive proof – Entry of date of birth in School Admission Register – Not conclusive proof of date of birth or age of person”. May be keeping this in view, the settled position of law is that the person born of an inter-caste marriage be given the caste from which he receives recognition as person belonging to that caste.

3. In the reference 3rd read above, the Government have admitted the appeal petition while granting the stay and called for the parawise remarks and connected records from the District Collector and Magistrate, Hyderabad vide Government Memo dated 04-07-2008.

p.t.o.

4. In the references 4th and 5th read above, the District Collector, Hyderabad has furnished parawise remarks along with the connected records, which are as follows:

The applicant is narrating a new story stating his mother has re-married to Sri Muthaiah who belongs to Yerukals community after divorcing her first husband Sri Yellaiah and he was born to Sri Muthaiah who expired after (2) two years of his birth. As such he is claiming Yerukala community certificate as his biological father belongs to Yerukala community. During the year 1991 when enquiry was taken up by the then Joint Collector, Sri Muthaiah who is said to be biological father of the applicant was not figured in the enquiry. This was came to notice only in the statements given before the joint Collector in the year 1996 at the time of re-enquiry. The ST certificate which was obtained by the applicant from Tahsildar, Charminar (M) also mentioned his father name as Sri Yellaiah and basing on the ST community certificate he got appointment in DMRL.

The applicant failed to show any evidence that his mother married with ST Yerukala person and he was born and brought up among the Yerukala community in support of his claim and his mother has taken divorce from his foster father Sri Yellaiah has not been established. His mother's name is Yellamma and his real father's name is Mathaiah who predeceased his mother said to belongs to Yerukala community and his real father Sri Mathaih was Expired, when he was child of 2 to 3 years and after expiry if his real father , his mother Smt. Yellamma remarried alliance with Sri Yellaiah her first husband who belongs to Veeramusti community. He further stated that his mother Smt. Yellamma divorced Sri Yellaiah before the community elders. Even assuming that the appellant can remember the things known to him at the age 2 years or so, why he does not mention his fathers name Muthaiah in his all educational records is not known.

The applicant has not furnished any evidence/documents/materials that his biological father was Sri Muthaiah and he belongs to ST Yerukala community except deposing statement before committee. The appellant created false story that his father expired in his childhood and he belongs to Yerukala community and his mother re-married to her divorced husband Sri Yellaiah. From the above facts it is clear that the appellant original father was Yellaiah only but for the sake of this case, the petitioner narrated a new story. His caste was recorded as Veeramusthi in educational records starting from admission into School. The TC issued by school authorities is confirming the said fact, it is also mentioned that the name of the his father also recorded as Sri K. Yellaiah who is his original father. But the appellant subsequently managed to get caste certificate of ST Belonging to Yerukala community from Tahsildar, Charminar Mandal fraudulently by submitting the letters issued by two gazetted officers namely (1) Asst. Director, Central Press, Hyderabad and (2) Asst. Director of Marketing (E) O/o Commissioner of Marketing.

The statements deposed by Central Government employees can't be solely relied upon, as they are not blood relatives of the petitioners. Their statement does not have much evidentiary value to take in to consideration for adjudication. At the time, the statement was given by appellant on 29.5.1995 before DLSC., his mother and father were alive and the petitioner was never presented before DLSC. Nor any written statement was given by the appellant mother, that her husband late

Muthaiah was second husband and she made intercaste marriage with him belonging to Yerukala Community by divorcing her first husband Sri Yellaiah. The appellant obtained caste certificate from Tahsildar, Charminar Mandal by misrepresenting the facts with an ulterior motives, and further it is submitted that the Tahsildar, Charminar has not taken in to account the instruction of the Government issued time to time and exceeded his authority while issuing caste certificate. Finally the DLSC, rightly cancelled the caste certificate issued to the petitioner.

5. The said appeal petition has been posted for hearing on 23.06.2009, 19.03.2010, finally on 26.08.2011 the same has been informed to the appellant and requested to attend the above hearings with all documentary evidences/ certificates in favour of his community claim, in the references 6th, 7th, and 8th read above. The appellant was presented for the said hearings and explained his community status before the appellate authority.

6. Government after careful examination of records and proceedings dated 26.05.2008 of the District Collector, Hyderabad and grounds and written arguments submitted by the appellant, it is observed that his mother Smt. Yellamma, who is illiterate hail from "Veeramushti" (B.C.-A) Community got married with one Sri Yellaiah, who is also an illiterate and belong to same caste. However, after some period they got divorced. After divorce, she married one Sri Muthaiah, who belong to "Yerukala" (ST) Community and the offspring is the petitioner Sri K. Bhikshapathi. When the applicant was 2-3 years old, Sri Muthaiah has passed away. Subsequently, Smt. Yellamma remarried her first husband Sri Yellaiah. The applicant was brought up by them and in the entire personal/academic record of the applicant, in the column of father, the name of Sri Yellaiah is recorded. However, right from the beginning, the applicant is claiming as "Yerukala" (ST) Community i.e. his own father's community and the crux of the problem is that, it does not appear that the District Administration has made discreet enquiry, while canceling the ST Certificate of the applicant. Rejection of the ST claim of the applicant by the lower authorities, mere on the ground that the mother and foster father not belong to ST Community and the claimant has not brought up in the ST atmosphere is not justifiable, and the statement of the witnesses Sri K. Swamy and (02) others of Falknuma and Ms. K. Tharabai, Corporator, Ward No. 26, Jangammet, GHMC and Andhra Pradesh Harijan Sevak Sangh, Ranga Reddy District supports the claim of the applicant as "Yerukala " (ST). It is also evident that the applicant is acquitted by the Court of the IX Metropolitan Magistrate, Hyderabad in C.C.No. 47/1997 dated 17.04.2001. The DMRL authorities also got the matter enquired and exonerated the applicant from the charges of submission of false caste certificate, vide their order No. DMRL/CF/1/6/1/ST, dated 03.02.2007.

7. After careful consideration of the entire material made available and in exercise of the powers conferred under section 7(2) of the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community certificates Act 1993(A.P Act No16 of 1993), the appeal petition filed by K. Bikshapathi S/o late K. Yellaiah, R/o Lab Quarters, Kanchanbagh, Hyderabad District, is hereby allowed by upholding the ST community certificate issued to Sri K. Bikshapathi by the then Tahsildar, Charminar, Hyderabad District vide R. Dis. No. F/6042/84, dated 01.12.1984 is in accordance with the rules. Hence, the orders passed by the District Collector, Hyderabad vide proceedings No. D6/6825/2006, dated 26.05.2008 is hereby set aside.

8. The District Collector, Hyderabad shall take necessary action in the matter.

p.t.o.

9. The records (containing No. (1) R. Dis No. D5/2436/90 c.f.p 01 to 96, n.f.p:01 to 08 Total 104, (2) D. Dis. No. F2/2942/92 c.f.p 01 to 54, n.f.p 01 to 06 Total 60 (3) R. Dis. No. D5/5047/93 c.f.P 01 to 152, n.f.p 01 to 14, (4) D2/F2/3357/96 c.f.p 01 to 117, and (5) No. C1/D5/D6/6825/2006, c.f.p. 01 to 157, n.f.p 01 to 20) received from District Collector, Hyderabad District, through 4th and 5th read above, are returned herewith in original to District Collector and he is requested to acknowledge the receipt of the same, immediately.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

**Dr.A.VIDYASAGAR
PRINCIPAL SECRETARY TO GOVERNMENT**

To

The Collector, Hyderabad District, (By RPAD) (with original records)

Sri K. Bikshapathi S/o late K. Yellaiah, H. No. C-37/1,
R/o Lab Quarters, Kanchanbagh, Hyderabad District- 500058.

Sri Shyam Sunder Murthy, Advocate,
H. No. 1-8-7/1, Sarvodaya colony, Hyderabad-5000 20.

The Director,
Defence Metallurgical Research Laboratory,
Kanchanbagh, Hyderabad.

Copy to:

P.S. to M (TW)

P.S. to Principal Secretary (TW)

The Director, TCR&TI, Hyderabad

The CTW, AP, Hyderabad

SF/SC.

// FORWARDED :: BY ORDER //

SECTION OFFICER